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Counsel for Plaintiff
Admitted *pro hac vice*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

W. CLARK APOSHIAN,

Plaintiff,

v.

MATTHEW WHITAKER, ACTING
ATTORNEY GENERAL
OF THE UNITED STATES, et al.

Defendants.

CIVIL ACTION NO.: 2:19-cv-00037-JNP

DECLARATION OF CALEB
KRUCKENBERG IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

I, Caleb Kruckenberg, declare under penalty of perjury that the following is true and correct to the best of my present knowledge, information and belief:

1. I am an attorney representing the Plaintiff in this matter.
2. I have been admitted to practice before this Court *pro hac vice*.
3. On January 17, 2019, I filed a declaration and exhibits in support of Plaintiff's Motion for Preliminary Injunction.
4. That declaration said that, among other exhibits, a true and correct copy of Exhibit E: John R. Spencer, Chief, Firearms Technology Branch, *Approval Letter* (June 18, 2008), was attached to the filing.

5. However, Exhibit E was inadvertently omitted from the final document.

6. Attached to this declaration is a true and correct copy of Exhibit E: John R. Spencer, Chief, Firearms Technology Branch, *Approval Letter* (June 18, 2008).

Executed on February 11, 2019

/s/ Caleb Kruckenberg
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel of record.

I

Respectfully,

/s/ Caleb Kruckenberg

Caleb Kruckenberg

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Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

JUN 18 2008

903050:MRC

3311/2008-371

Mr. Michael Foeller II
2216 Oak Hill Drive
Deland, Florida 32720

Dear Mr. Foeller:

This is in reference to your submitted item, as well as accompanying correspondence, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). This item, consisting of a metal type shoulder stock, was submitted with a request for classification under the Gun Control Act (GCA) and National Firearms Act (NFA).

As background information, the NFA, 26 U.S.C. Section 5845(b), defines “**machinegun**” as—

*“...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, **any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.**”*

The device submitted for evaluation consists of the following:

- Two sections of square metal tubing, the exterior tube measuring approximately 10 x 1-1/2 x 1-1/2 inches. Additionally, a flat piece of metal similar in shape to a butt plate is welded to the rear of the exterior tube.
- An interior tube measuring approximately 12-9/16 x 1-1/4 x 1-1/4 inches.
- A flat piece of metal measuring 4-3/4 x 1-3/8 x 3/16 inches attached by means of welding to the bottom and located on the front of the exterior tubing.
- A cylindrically shaped section of pipe that acts as pistol grip and is attached to the previously described flat piece of metal by means of welding. It measures approximately 4-1/8 inches in length and 1-5/16 inches in diameter.
- A support bar attached to the pistol grip and butt plate by means of welding. It measures approximately 11-1/4 x 13/16 x 3/8 inches.
- Interior tubing that has been drilled and tapped for two oval head screws which are located on the left and right side. These screws are used to stop the rearward movement after a short distance of travel. Additionally, two holes have been drilled and tapped into the top of the interior tube which allow attachment of the device to an AK-type rifle.

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- An exterior-tube slot (1-3/16 inches) milled on the bottom, approximately 4-3/16 inches from the front of the tube. The interior tubing has a hole drilled and tapped to accept an oval head screw. This screw supports the two previously mentioned stop screws on the interior tubing. It also stops the forward travel of the interior tubing after a short distance of travel.

To install this shoulder-stock device on an AK-type rifle, the shoulder stock and independent pistol grip has to be removed. Next, the front of the interior tube has to be inserted into the interior cavity of the receiver of the AK-type rifle, and the attachment screws installed.

The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an intermediate amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil rearward far enough to allow the trigger to mechanically reset. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, each shot being fired by a single function of the trigger. Further, every subsequent shot depends on the shooter applying the appropriate amount of forward pressure to the fore-end and timing it to contact the trigger finger on the firing hand.

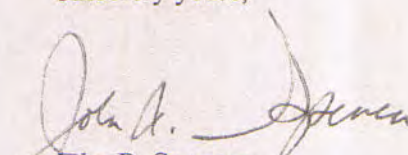
Since your device is incapable of initiating an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, FTB finds that it is NOT a machinegun under the NFA, 26 U.S.C. 5845(b), or the GCA, 18 U.S.C. 921(a)(23).

Please note that this classification is based on the item as submitted. Any changes to its design features or characteristics will void this classification. In addition, we caution that the addition of an accelerator spring or any other non-manual source of energy which allows this device to operate automatically as described will result in the manufacture of a machinegun as defined in the NFA, 26 U.S.C. 5845(b).

Please provide our Branch with a FedEx account number so that we may return this item to you.

We thank you for your inquiry and trust the foregoing has been responsive to your request.

Sincerely yours,



John R. Spencer
Chief, Firearms Technology Branch